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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL JASON MOORE,

Defendant and Appellant.

A133095

(Contra Costa County
Super. Ct. No. 50900670)

Defendant Michael Jason Moore was evading police in the vehicle he had stolen when he killed Manual Padilla in a head-on collision. In June 2009, pursuant to a negotiated disposition, defendant was sentenced to state prison for eight years and four months after he entered pleas of no contest to vehicular manslaughter and four other charges. On October 5, 2009, defendant was ordered to pay restitution of \$33,600 to Nanette Padilla, the victim's wife.

On April 22, 2011, the prosecutor provided defendant with a "Notice To Defendant Regarding Restitution—Amended," together with a "proposed Order for Restitution" that would increase the sum owed to Ms. Padilla to \$75,710. Defendant was provided counsel and transferred from prison to attend any proceedings generated by the new restitution request. The reason for revisiting the issue of restitution was that the Victim Compensation and Government Claims Board had paid \$70,000 to Ms. Padilla.

After conducting several hearings on the prosecution's application, the trial court made "Order For Restitution" directing defendant to pay \$45,000 to the Victim

Compensation and Government Claims Board, this being the amount of the victim's lost wages paid to his widow and not covered by the original restitution order.

Defendant filed a timely notice of appeal from that order. His appointed counsel has asked this court to independently examine the record in accordance with *People v. Wende* (1979) 25 Cal.3d 436, to determine if there are any arguable issues that require briefing. Defendant was apprised of his right to file a supplemental brief, but he did not do so.

Although defendant secured a certificate of probable cause ordinarily required by Penal Code section 1237.5, it was not necessary here because any challenge to the postsentencing restitution order would not involve a challenge to any aspect of the plea bargain (*People v. Kunitz* (2004) 122 Cal.App.4th 652, 658), which in any event has long since elapsed.

“The scope of a criminal defendant's due process at a hearing to determine the amount of restitution is very limited: ‘ “A defendant's due process rights are protected when [the defendant has] notice of the amount of restitution claimed . . . and the defendant has an opportunity to challenge the figures” ’ [Citations.]” (*People v. Cain* (2000) 82 Cal.App.4th 81, 86; see Pen. Code, § 1202.4, subd. (f)(1).) Defendant had that notice and that opportunity.

“[I]n every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court.” (Pen. Code, § 1202.4, subd. (f).) “If, as a result of the defendant's conduct, the Restitution Fund has provided assistance to . . . a . . . derivative victim . . . the amount of assistance provided shall be presumed to be a direct result of the defendant's criminal conduct and shall be included in the amount of the restitution ordered. [¶] The amount of assistance provided by the Restitution Fund shall be established by copies of bills submitted to the California Victim Compensation and Government Claims Board reflecting the amount paid by the board and whether the services for which payment was made were for medical or dental

expenses, funeral or burial expenses, mental health counseling, wage or support losses, or rehabilitation. Certified copies of these bills . . . together with a statement made under penalty of perjury by the custodian of records that those bills were submitted to and were paid by the board, shall be sufficient to meet this requirement.” (*Id.*, subds. (f)(4)(A), (f)(4)(B).) The trial court followed these procedures.

“[T]here is no express statute of limitation on the matter of victim restitution.” (*People v. Harvest* (2000) 84 Cal.App.4th 641, 652.) Once the Victim Compensation and Government Claims Board made an award to the victim’s widow that exceeded the amount previously ordered by the court, the court could amend its restitution order accordingly. (Pen. Code, § 1202.4, subds. (f)(1), (f)(2).)

The trial court did not abuse its discretion in fixing the amount of restitution. (*People v. Giordano* (2007) 42 Cal.4th 644, 663.)

Our independent review having found no arguable issues that require briefing, the judgment of conviction is affirmed.

Richman, J.

We concur:

Haerle, Acting P.J.

Lambden, J.